



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket Nos. 120328229-4949-02 and 180117042-8884-02]

RIN 0648-XG839

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; annual adjustment of Atlantic bluefin tuna Purse Seine and Reserve category quotas; inseason quota transfer from the Reserve category to the General category.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2019, as it has done annually since 2015. NMFS also is transferring 25 metric tons (mt) of BFT quota from the Reserve category to the General category January 2019 period (from January 1 through March 31, 2019, or until the available subquota for this period is reached, whichever comes first). The transfer to the General category is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective *[insert date of filing for public inspection with the Office of the Federal Register]*, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260, Uriah Forrest-Bulley, 978-675-2154, or Larry Redd, 301-427-8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 53191, October 11, 2018). As a result, based on the currently codified U.S. quota of 1,247.86 mt (not including the 25 mt allocated by ICCAT to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area), the baseline Purse Seine, General, and Reserve category quotas are codified as 219.5 mt, 555.7 mt, and 29.5 mt, respectively. See § 635.27(a). For 2019 to date, NMFS has made the following inseason quota transfers: 19.5 mt

from the General category December 2019 subquota period to the January 2019 subquota period (83 FR 67140, December 28, 2018) and 26 mt from the Reserve category to the General category (84 FR 3724, February 13, 2019), resulting in an adjusted 2019 Reserve category quota of 3.5 mt.

Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to the Atlantic Tunas Purse Seine category participants in 2019, based on their BFT catch (landings and dead discards) in 2018. In accordance with the regulations, NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, as described in § 635.27(a)(4)(ii), and reallocates the remainder to the Reserve category. NMFS has calculated the amounts of quota available to the Purse Seine category participants for 2019 based on their individual catch levels in 2018 and the codified process adopted in Amendment 7. NMFS did not open the Purse Seine fishery in 2018 because there were no purse seine vessels permitted to fish for BFT and thus no catch in 2018. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 43.9 mt (219.5 mt divided by five Purse Seine category participants), 25 percent of which is 11 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS notifies Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the IBQ electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 55 mt are available to the Purse Seine category for 2019. Thus, the amount of Purse Seine category quota

to be reallocated to the Reserve category is 164.5 mt (219.5 mt - 55 mt). This reallocation results in an adjusted 2019 Reserve category quota of 168 mt (3.5 mt + 164.5 mt), before any further transfers to other categories.

Transfer of 25 mt from the Reserve category to the General category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering regulatory determination criteria at § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to the General category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). On February 20, 2019, the General category had landed 74 mt of its adjusted January 2019 subquota of 75 mt. At that time, NMFS considered that without a quota transfer, the January 2019 General category fishery would face closure, while unused quota remained in the Reserve category and commercial-sized bluefin tuna

remain available in the areas where General category permitted vessels operate at this time of year.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that all 25 mt of transferred quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.*, the June through August time period), and NMFS anticipates that it would be used by the subquota category before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 25-mt transfer to the General category.

This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments, which include measures to meet obligations related to ending overfishing

and rebuilding stocks (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS also anticipates that some underharvest of the 2018 adjusted U.S. BFT quota will be carried forward to 2019 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2019 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2018 (*i.e.*, transferred 60 mt from the Reserve category effective September 18, 2018 (83 FR 47843, September 21, 2018); 40 mt from the Harpoon category and 15 mt from the Reserve category effective October 4, 2018 (83 FR 50857, October 10, 2018); and 9.9 mt from the Harpoon category and 129.2 mt from the General category effective November 29, 2018 (83 FR 62512, December 4, 2018)). NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable (§ 635.27(a)(8)(viii)). Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds considering the expected increases in available 2019

quota later in the year, and provide a reasonable opportunity to harvest the full U.S. bluefin tuna quota, without precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota. As the agency decision-making process for this inseason action progressed, additional catches in the General category brought landings to date up to 76.6 mt as of February 22, 2019. Given that this inseason action adjusting the quota was then pending, we determined that filing a closure notice, immediately followed by re-opening the General category, would create unnecessary administrative burden for NMFS and potentially confuse the regulated community.

Based on the considerations above, NMFS is transferring 25 mt from the adjusted Reserve category to the General category for the January 2019 fishery, resulting in a subquota of 100 mt for the January 2019 fishery (75 mt + 25 mt) and 143 mt in the Reserve category (168 mt - 25 mt).

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on, the transfer from the Reserve category to the General category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the fishery would be closed absent the additional quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would result in further exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b) and 635.27(a)(4), (7), (8), and (9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 25, 2019.

Karen H. Abrams,
Acting Director,
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National Marine Fisheries Service.

[FR Doc. 2019-03554 Filed: 2/25/2019 4:15 pm; Publication Date: 2/28/2019]